

Remarks

Applicant has reviewed the Office Action dated as mailed July 3, 2006 and the documents cited therewith and the present amendment has been prepared in response thereto. Claims 1-6, 8, 9, 11-22 and 47 stand rejected. Claims 7, 10, 23-46 and 48 – 57 are withdrawn. Independent claims 1 and 11 have been amended. Dependent Claims 4, 12, 17, 18, 20, 21 and 22 have also been amended. Claims 3, 5, 13, 15 and 16 have been cancelled. New claim 58 has been added.

The Examiner rejected claims 4, 5 and 15 under 35 U.S.C. 112 second paragraph. Claim 4 has been amended to overcome this rejection. Claims 5 and 15 have been cancelled.

Independent claim 1 sets forth a tool retaining system comprising an outer casing having at least one housing member with upstanding walls extending approximately perpendicularly from a base and a plurality of female recesses defined within the walls. A tool tray having at least two opposed side walls extending approximately perpendicularly downward from a top wall, the opposed side walls having an outer surface, the outer surface having one or more male protrusions extending therefrom, and the top wall having a plurality of tool receiving recesses each including at least two opposed bit retaining members. The male protrusions on the tool tray snap into the female recesses on the walls of the outer casing to retain the tool tray in the casing such that the tool tray cannot slide relative to the casing. The male protrusions being removable from the female receptacles by a user such that the tool tray can be removed from the outer casing.

The Examiner rejected the claims as being anticipated by Streich pointing to the dovetail sections 74 and 144 as defining both male and female recesses. Original claims 3 and 11, rejected as being anticipated by Streich, required that the tool tray be removably secured to the casing as does amended claim 1. The Examiner did not specifically comment on claims 3 or 11, therefore, the applicant understands the Examiner's position to be that Streich discloses the use of male and female receptacles to provide a removable tray where the tray cannot slide relative to the casing.

While Streich discloses a dovetail joint, the tool retaining inserts are permanently retained in the housing. Streich explains the permanent connection between the tool retaining inserts and the housing at column 4, lines 52-56 and again at column 6, lines 5-8. In the Summary of the Invention

(col. 1, lines 36-37) Streich explains “An insert for retaining the tools is permanently secured in the housing.” Streich continues (col. 1, lines 45-47) “the recesses have a surface angled corresponding to the front face of the tenon for locking the insert within the cavity.” Again at col. 2, lines 38-39 Streich explains “The inserts, after determining a position in the housing, are permanently secured in the cavity.”

Thus, not only does Streich not anticipate claim 1 that requires that the insert be removable, it actually teaches away from such an arrangement. It is submitted that claim 1 as amended defines over Streich and is allowable.

It is submitted that claim 2 is allowable because the prior art does not disclose a tool retaining system where the outer casing and the at least one tool tray are comprised of a flexible material. The flexible material allows the tray and casing to flex to allow the tray to be removed from and reinserted into the casing.

Claims 4, 6, 8 and 9 are allowable for the same reasons as claim 1 from which they depend.

Independent claim 11 sets forth a tool retaining system comprising at least two housing members that are hingedly attached with respect to one another, at least one of the housing members defining a recessed cavity for receiving a tool tray, the cavity comprised of a base and at least two upstanding walls. A tool tray secured to the at least one housing member. An elastomeric band is disposed at least partially about the periphery of one of the at least two housing members. The elastomeric band is comprised of a first material and the one of the at least two housing members is comprised of a second material where the band is attached to the housing member. New claim 58 requires that the first material is softer than the second material.

The Examiner took the position that the material of the case in Streich corresponds to the claimed band of material. Claim 11 now clearly requires at least two housing members made of a first material and an elastomeric band made of a second material where the elastomeric band is attached to at least one of the housing members. Clearly an interpretation of Streich cannot be made where the wall of the casing constitutes both the housing and the band of material where these two elements are made of different materials. Further as set forth in claim 58 there is no

disclosure in Streich for a band attached to the housing where the second material comprising the band is softer than the first material of the housing. It is submitted that both claims 11 and 58 define over Streich and are allowable.

It is submitted that claim 12 is allowable as the prior art does not disclose a tool retaining system where the outer casing and the elastomeric band are comprised of a flexible material. The flexible material allows the tray and casing to flex to allow the tray to be removed from and reinserted into the casing.

It is submitted that claims 14 and 17 are allowable as the prior art does not disclose housing members having a split-rail latch where the split-rail has abutments preventing the latch from sliding to the end of the split-rail. This feature is discussed further with respect to claim 47 below.

It is submitted that claims 18 and 19 are allowable as the prior art does not disclose a device where each housing member is defined by a first pair of opposed side walls and a second pair of opposed side walls upstanding from a base, and where the elastomeric material surrounds the first pair of opposed side walls and defines a flat thread pattern therein. Since the references relied on by the Examiner do not disclose the elastomeric band they also do not disclose a band having the features of claims 18 or 19. The Examiner pointed to the hinge of Streich as corresponding to the claimed feet. The hinge is not disposed on opposed side walls as required by claim 19 nor is the hinge formed as part of a separate elastomeric band attached to the housing as required by claim 19.

Claim 20 is allowable for the same reasons as independent claim 11 from which it depends.

Claim 21 is allowable for the same reasons 21 as claim 19. Streich does not include a band of elastomeric material that includes at least one flat surface disposed about at least one of a first opposing side wall enabling the tool retaining system to stand on the side wall.

It is submitted that claim 22 is allowable for the same reasons given with respect to claim 11 from which it depends.

Independent claim 47 sets forth a tool retaining system comprising an outer casing and an inner tool tray. The outer casing comprises two hingedly attached housing members that open and close along a hinge, each of the housing members being defined by a base and a plurality of upstanding walls. The outer casing is secured by a split rail latch wherein at least one housing member includes at least one abutment preventing the latch from sliding to an end of the split-rail.

The Examiner rejected claim 47 referring to Fig. 6 of Streich where the abutment is formed by “the enlarged portion that meets the case sections outer wall”. The applicant has reviewed Fig. 6 and can find no abutment. The rail consists of elements 94 and 96. These elements extend between the case walls and have a uniform thickness for the entire length thereof. Thus these elements do not have the claimed abutment. It is true that the case walls will stop the travel of the latch 92. However, claim 47 clearly requires that the abutment prevent the latch from sliding to the end of the split rail. The case walls of Steich do not perform in such a manner. When the latch contacts the case walls the latch has slid to the end of the rail. This is the very action that the abutment of the invention is intended to and does prevent. It is submitted that Streich does not disclose or suggest the abutment as set forth in claim 47 and that this claim is allowable.

If the Examiner has any questions about the present Amendment a telephone interview is requested.

If necessary, please charge any additional fees or credit overpayment to Deposit Account No. 13-4365.

Respectfully submitted,

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